

ATTACHMENT A

HATEM NAJI FARIZ'S PROPOSED PRELIMINARY INSTRUCTIONS

Preliminary Instructions Before Opening Statements (Long Form)¹

Members of the Jury:

You have now been sworn as the jury to try this case and I would like to give you some preliminary instructions at this time.

By your verdicts you will decide the disputed issues of fact. I will decide all questions of law that arise during the trial, and before you retire to deliberate together and decide the case at the end of the trial, I will then instruct you again on the rules of law that you must follow and apply in reaching your decision.

Because you will be called upon to decide the facts of the case you should give careful attention to the testimony and evidence presented for your consideration during the trial, but you should keep an open mind and should not form or state any opinion about the case one way or the other until you have heard all of the evidence and have had the benefit of the closing arguments of the lawyers as well as my instructions to you on the applicable law.

During the trial you must not discuss the case in any manner among yourselves or with anyone else, and you must not permit anyone to attempt to discuss it with you or in your presence; and, insofar as the lawyers are concerned, as well as others whom you may come

¹ Mr. Fariz's proposed preliminary instruction is based on Trial Instruction 2.2, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003. Substantive differences from the pattern are indicated in *italics*. Substantive differences from, or objections to, the government's proposed instruction (Doc. 1144) are indicated in **bold**. Differences from both the pattern and the government's proposal are in ***bold italics***. Matters that were emphasized in the pattern instruction or should be emphasized are underlined.

to recognize as having some connection with the case, you are instructed that, in order to avoid even the appearance of impropriety, you should have no conversation whatever with those persons while you are serving on the jury.

You must also *not read* any newspaper articles that might be published about the case now that the trial has begun, and you must also avoid listening to or observing any broadcast news program on either television or radio because of the possibility that some mention might be made of the case during such a broadcast now that the trial is in progress.

The reason for these cautions, of course, lies in the fact that it will be your duty to decide this case only on the basis of the testimony and evidence presented during the trial without consideration of any other matters whatever.

From time to time during the trial I may be called upon to make rulings of law on motions or objections made by the lawyers. You should not infer or conclude from any ruling I may make that I have any opinions on the merits of the case favoring one side or the other. And if I sustain an objection to a question that goes unanswered by the witness, you should not speculate on what answer might have been given, nor should you draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to confer with the lawyers from time to time out of your hearing concerning questions of law or procedure that require consideration by the Court alone. On some occasions you may be excused from the courtroom as a convenience to you and to us while I discuss such matters with the lawyers. I will try to limit such interruptions as much as possible, but you should remember at all times the importance

of the matter you are here to determine and should be patient even though the case may seem to go slowly.

In that regard, as you were told during the process of your selection, we expect the case to last approximately *six to nine months*, but I will make every effort to expedite the trial whenever possible.

Now, in order that you might better understand at the beginning of the case the nature of the decisions you will be asked to make and how you should go about making them, I would like to give you some preliminary instructions at this time concerning some of the rules of law that will apply.

Of course, the preliminary instructions I will give you now will not cover all of the rules of law applicable to this case. As stated before, I will instruct you fully at the end of the trial just before you retire to deliberate upon your verdicts, and will probably restate at that time some of the rules I want to tell you about now. In any event, you should not single out any one instruction alone as stating the law, but should consider all of my instructions as a whole.

[Mr. Fariz objects to the government's proposed instruction concerning the absence of five co-defendants (Doc. 1144 at 4).]

Each **Count and Defendant** To Be Given Separate Consideration.² A separate crime or offense is charged against **one or more of the Defendants** in each Count of the **indictment**. Each **Count**, and the evidence pertaining to it, should be considered separately. **Also, each Defendant should be considered separately and individually. The fact that you may find any one or more of the Defendants guilty or not guilty of any of the offenses charged should not affect your verdict as to any other Defendant.**

*The fact that these Defendants are being tried together is not and should not be considered by you as evidence of **guilt of any Defendant**. You also may not consider as evidence **against any Defendant** that the **Defendant's attorneys** may present evidence, object to the admission of evidence, or cross-examine witnesses together.*

[Mr. Fariz would respectfully request the Court's jury instruction concerning the Court's instruction to defense counsel not to repeat cross-examination questions of the other defense counsel.]

I caution you, members of the Jury, that you are here to determine from the evidence in this case whether each Defendant is guilty or not guilty. Each Defendant is on trial only for the specific offenses alleged in the indictment.

Presumption of Innocence. As you were told during the process of your selection, an indictment in a criminal case is merely the accusatory paper which states the charge or

² This instruction is largely based on Eleventh Circuit Basic Jury Instruction 10.4 concerning multiple defendants and multiple counts, and the government's proposed instruction (except the text in **bold**).

charges to be determined at the trial, but it is not evidence against the Defendant or anyone else. Indeed, *each* Defendant has entered a plea of Not Guilty. ***That means you must presume or believe that the Defendant is innocent. The presumption stays with the Defendant as to each material allegation in the indictment and through each stage of trial, unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.*** If the government fails to do so, you must find that Defendant not guilty.³

Burden of Proof. Proof beyond a reasonable doubt is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

Order of Proof - Defendant's Right Not To Testify. Because the Government has the burden of proof it will go forward and present its testimony and evidence first. After the Government finishes or "rests" what we call its "case in chief," *each* Defendant may call witnesses and present evidence if he wishes to do so. However, you will remember that the law does not require a Defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a Defendant not to testify in the event he should so elect.

³ The plain text portion of this instruction is from Basic Jury Instruction 2.2, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003. The portion in bold italics is from Standard Jury Instruction 3.7, *Florida Standard Jury Instructions (Criminal Cases)*, 2002.

Consideration of the Evidence and Direct and Circumstantial Evidence.⁴ As I said earlier, you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses and the exhibits admitted in the record. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that *will* control. What the lawyers say is not binding upon you. Also, you should not assume from anything I may say that I have any opinion concerning any of the issues in this case. Except for my instructions to you on the law, you should disregard anything I may say during the trial in arriving at your own decision concerning the facts.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances tending to prove, or disprove, any fact in dispute. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Credibility Of The Witnesses. As you listen to the testimony you should remember that you will be the sole judges of the credibility or "believability" of each witness and the

⁴ This instruction is from Eleventh Circuit's Basic Jury Instruction 4.2 (2003). Mr. Fariz would request the entire instruction. Mr. Fariz would additionally note that he has reversed the order of the government's proposed instructions, placing this instruction before the instruction on the credibility of witnesses.

weight to be given to his or her testimony. In deciding whether you believe or disbelieve any witness you should consider his or her relationship to the Government or to the Defendant; the interest, if any, of the witness in the outcome of the case; his or her manner of testifying; the opportunity of the witness to observe or acquire knowledge concerning the facts about which he or she testified; the candor, fairness and intelligence of the witness; and the extent to which the witness has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Trial Transcripts Not Available. You will notice that the Court Reporter is making a complete stenographic record of all that is said during the trial, including the testimony of the witnesses, in case it should become necessary at a future date to prepare printed transcripts of any portion of the trial proceedings. Such transcripts, however, if prepared at all, will not be printed in sufficient time or appropriate form for your review during your deliberations, and you should not expect to receive any transcripts. You will be required to rely upon your own individual and collective memory concerning what the testimony was.

Exhibits Will Be Available. On the other hand, any papers and other tangible exhibits received in evidence during the trial will be available to you for study during your deliberations. On some occasions, during the trial, exhibits may be handed to you for brief inspection there in the Jury box; others will not be shown to you. But do not be concerned because, as I said, you will get to see and inspect at the end of the case all of the exhibits that are received in evidence.

Notetaking - Permitted. Because transcripts will not be available, you will be permitted to take notes during the trial if you want to do so, and the Clerk will provide notebooks and pens or pencils for each of you. On the other hand, of course, you are not required to take notes if you do not want to. That will be left up to you, individually.

If you do decide to take notes, be careful not to get so involved in notetaking that you become distracted from the ongoing proceedings. Don't try to summarize all of the testimony. Instead, limit your notetaking to specific items of information that might be difficult to remember later such as dates, times, amounts, measurements or identities and relationships. But remember that you must decide upon the credibility or believability of each witness, and you must therefore observe the demeanor and appearance of each witness while testifying. Notetaking must not distract you from that task.

Also your notes should be used only as aids to your memory; and, whether you take notes or not, you should rely upon your own independent recollection or memory of what the testimony was and should not be unduly influenced by the notes of other Jurors. Notes are not entitled to any greater weight than the recollection or impression of each Juror as to what the testimony was.

Instructions On The Law Of Conspiracy. As you know from the explanation I gave during the course of your selection, it is charged in this case (among other things) that the

Defendants engaged in an unlawful "conspiracy" to commit certain offenses, *as alleged in Counts One, Two, Three, and Four. More specifically:*⁵

Count One

Count One charges that, from in or about 1984, the exact date being unknown, and continuing until in or about the date of the indictment, in the Middle District of Florida and elsewhere, Defendants Sami Amin Al-Arian, Ramadan Abdullah Shallah, Bashir Musa Mohammed Nafi, Sameeh Taha Hammoudeh, Muhammed Tasir Hassan Al-Khatib, Abd Al Aziz Awda, Ghassan Zayed Ballut, Hatem Naji Fariz, and Mazen Al-Najjar, knowingly, willfully, and unlawfully conspired to violate Title 18, United States Code, Section 1962(c), in violation of Title 18, United States Code, Section 1962(d). The Defendants are alleged to be persons employed by and associated with the Palestinian Islamic Jihad-Shiqaqi Faction (PIJ), which is alleged to include the Islamic Concern Project, Inc., the Muslim Women's Society, the World and Islam Studies Enterprise, the Islamic Academy of Florida, the Elehssan Society, and the American Muslim Care Network, which is alleged to constitute the PIJ Enterprise, and to be an enterprise that is engaged in, and that its activities affected, interstate and foreign commerce.

⁵ At this point, Mr. Fariz would request that the Court read the entire superseding indictment to the jury. Alternatively, Mr. Fariz requests that the Court read these summaries based on the charges in the indictment. Mr. Fariz objects to the pattern instruction for conspiracies, proposed by the government, because it is too general and fails to address the four specific conspiracies charged in this case. The summary proposed herein includes the charging language of the indictment, the applicable dates of the statutes, and the essential elements of the offenses.

The indictment alleges that the Defendants knowingly, willfully, and unlawfully conspired to violate Title 18, United States Code, Section 1962(c); that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise, through a pattern of racketeering activity, as defined in Title 18, United States Code, Sections 1961(1) and (5), consisting of:

(a) multiple acts involving murder, in violation of Florida Statutes 782.04; 777.04(3);

(b) multiple acts involving extortion in violation of Florida Statutes 836.05, 777.011 and 777.04;

(c) on or after October 27, 1986, acts indictable under Title 18, United States Code, Section 1956(a)(2) and (h) [money laundering];⁶

(d) acts indictable under Title 18, United States Code, Section 1952 [interstate or foreign travel or transportation and use of any facilities in interstate or foreign commerce with the intent to promote and carry on an unlawful activity];

(e) on or after October 26, 2001, acts indictable under Title 18, United States Code, Section 956 [conspiracy to kill, kidnap, maim or injure persons in a foreign country];⁷

⁶ Pub. L. No. 99-570, § 1365(b), 100 Stat. 3207 (Oct. 27, 1986) (adding Section 1956 to Section 1961(1)).

⁷ Pub. L. No. 107-56, Title VIII, § 813, 115 Stat. 272, 382 (Oct. 26, 2001) (adding Section 2332b(g)(5)(B)); 18 U.S.C. § 2332b(g)(5)(B) (including Section 956(a)(1)).

(f) on or after October 26, 2001, acts indictable under Title 18, United States Code, Section 2339B [providing material support or resources to designated Foreign Terrorist Organizations];⁸

(g) on or after April 24, 1996, acts indictable under Title 18, United States Code, Section 1546 [fraud and misuse of visas, permits, and other documents];⁹ and

(h) acts indictable under Title 18, United States Code, Section 1503 [obstruction of justice].

The indictment charges that each Defendant agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the enterprise.

You will note that I have indicated that certain of the alleged predicate offenses did not become effective until the dates I have read to you. That means that you should not consider conduct occurring prior to those dates in reaching your verdict.

In order to establish the offense of conspiracy as alleged in Count One, the government must prove beyond a reasonable doubt each of the following essential elements as to each Defendant:

First: That two or more persons, in some way or manner, came
to a mutual understanding to try to accomplish a common

⁸ Pub. L. No. 107-56, Title VIII, § 813, 115 Stat. 272, 382 (Oct. 26, 2001) (adding Section 2332b(g)(5)(B)); 18 U.S.C. § 2332b(g)(5)(B) (including Section 2339B).

⁹ Pub. L. No. 104-132, Title IV, § 433, 110 Stat. 1214 (Apr. 24, 1996) (adding Section 1546).

and unlawful plan, namely, to engage in a "pattern of racketeering activity" as charged in the indictment; and

Second: That the Defendant knowingly and willfully became a member of such conspiracy; and

Third: That at the time the Defendant knowingly and willfully agreed to join in such conspiracy, the Defendant did so with the specific intent either to personally participate in the commission of two "predicate offenses," (*which will be more fully defined for you in a later instruction*), or that the Defendant specifically intended to otherwise participate in the affairs of the "enterprise" with the knowledge and intent that other members of the conspiracy would commit two or more "predicate offenses" as a part of a "pattern of racketeering activity."

and

Fourth: *That the enterprise was engaged in, or that its activities substantially affected, interstate commerce.*¹⁰

¹⁰ Based on Offense Instructions 71.1 and 71.2, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003; Doc. 636 at 10.

Count Two

Count Two charges that, from in or about April, 1996, the exact date being unknown, and continuing until the date of indictment, in the Middle District of Florida and elsewhere, Defendants Sami Amin Al-Arian, Ramadan Abdullah Shallah, Bashir Musa Mohammed Nafi, Sameeh Taha Hammoudeh, Muhammed Tasir Hassan Al-Khatib, Abd Al Aziz Awda, Ghassan Zayed Ballut, Hatem Naji Fariz, and Mazen Al-Najjar, knowingly, unlawfully, and willfully conspired to commit, at places outside the United States, acts that would constitute the offense of murder or maiming if committed in the special maritime and territorial jurisdiction of the United States, in violation of Title 18, United States Code, Section 956.

This statute became law on April 24, 1996.¹¹ Therefore, prior to this date, it was not unlawful to conspire to murder or maim persons outside of the United States.

In order for a Defendant to be found guilty of the charged conspiracy, the government must prove each of the following essential elements beyond a reasonable doubt:

First: *The Defendant agreed with at least one person to murder or maim a person at a place outside of the United States; and*

Second: *The Defendant willfully joined the agreement with the intent to further the conspiracy's purposes; and*

¹¹ Public Law No. 104-132, Title VII, § 704(a), 110 Stat. 1294 (Apr. 24, 1996).

Third: *During the conspiracy, at least one of the conspirators committed at least one overt act within the United States; and*

Fourth: *That such overt act was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy; and*

Fifth: *The Defendant was in the United States when the agreement was made.*¹²

Count Three

Count Three alleges that from in or about 1988, the exact date being unknown, and continuing to the date of the indictment, in the Middle District of Florida and elsewhere subject to the jurisdiction of the United States, Defendants Sami Amin Al-Arian, Ramadan Abdullah Shallah, Bashir Musa Mohammed Nafi, Sameeh Taha Hammoudeh, Abd Al Aziz Awda, Ghassan Zayed Ballut, Hatem Naji Fariz, and Mazen Al-Najjar, conspired to knowingly provide material support and resources, to a designated Foreign Terrorist Organization (“FTO”), namely, the Palestinian Islamic Jihad, in violation of Title 18, United States Code, Section 2339B.

¹² 18 U.S.C. § 956(a)(1); Doc. 479, Court Order of March 12, 2004, at 47-48 (citing *United States v. Wharton*, 320 F.3d 526, 537-38 (5th Cir. 2003)).

The Palestinian Islamic Jihad (“PIJ”) was not designated as an FTO until October 8, 1997.¹³ Therefore, prior to that date, it was not illegal to conspire to provide material support or resources to the PIJ.

In order to prove a Defendant guilty of the charged conspiracy, the government must prove each of the following essential elements beyond a reasonable doubt:

First: Two or more persons came to a mutual understanding to try to accomplish a common and unlawful plan;

Second: To provide material support or resources (which will be defined for you in a later instruction);

Third: To a designated foreign terrorist organization, that is the Palestinian Islamic Jihad;

Fourth: The Defendant knowing the unlawful purpose of the plan, willfully joined in it;

Fifth: The Defendant knew that the Palestinian Islamic Jihad was a designated foreign terrorist organization;

Sixth: The Defendant knew what he was providing was a material support or resource;

¹³ By proposing this instruction, Mr. Fariz does not waive his objections to the Court taking judicial notice of this designation, or the other arguments he has made concerning the designation of the PIJ. *See, e.g.* Doc. 1036 and citations therein. Instead, Mr. Fariz proposes this instruction to address the applicable dates at issue here to avoid *ex post facto* concerns.

Seventh: *The Defendant had the specific intent that the material support or resource would further the unlawful activities of the Palestinian Islamic Jihad;*

Eighth: *That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the “overt acts” described in the indictment; and*

Ninth: *That such “overt act” was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.¹⁴*

Count Four

Count Four alleges that, beginning not later than January 25, 1995 and continuing to the date of the indictment, in the Middle District of Florida and elsewhere, Defendants Sami Amin Al-Arian, Ramadan Abdullah Shallah, Bashir Musa Mohammed Nafi, Sameeh Taha Hammoudeh, Ghassan Zayed Ballut, Hatem Naji Fariz, and Mazen Al-Najjar conspired knowingly and willfully to violate Executive Order 12,947, by making and receiving contributions of funds, goods, and services to or for the benefit of the Palestinian Islamic Jihad, Abd Al Aziz Awda, Fathi Shiqaqi, and Ramadan Abdullah Shallah, in violation of Title 50, United States Code, Sections 1701 et seq., Title 31, Code

¹⁴ Based on Doc. 479, Order of March 12, 2004, at 25; *United States v. Al-Hussayen*, No. CR03-048-C-EJL, Doc. 660, Jury Instructions, Instruction No. 37 (D. Idaho) (a copy will be provided for the Court and the parties); Offense Jury Instructions 13.1, General Conspiracy Charge, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003; U.S. Const. amends. I, V.

of Federal Regulations, Section 595 et seq., and Title 18, United States Code, Section 371.

You are instructed that the Palestinian Islamic Jihad was designated on January 23, 1995;

Abd Al Aziz Awda was designated on January 25, 1995;

Fathi Shiqqi was designated on January 25, 1995; and

Ramadah Shallah was designated on November 27, 1995.¹⁵

Therefore, until the dates of these designations, it was not illegal to conspire to make and receive contributions of funds, goods, and services to or for the benefit of the PIJ or these individuals.

The government must prove beyond a reasonable doubt the following essential elements as to each Defendant:

First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan as charged in the indictment, *namely, by making and receiving contributions of funds, goods, and services to or for the benefit of the Palestinian Islamic Jihad, Abd Al Aziz Awda, Fathi Shiqqi, and Ramadan Abdullah Shallah; and*

¹⁵ By proposing this instruction, Mr. Fariz does not waive his objections to the Court taking judicial notice of this designation, or the other arguments he has made concerning the designations. *See, e.g.* Doc. 1036 and citations therein. Instead, Mr. Fariz proposes this instruction to address the applicable dates at issue here to avoid *ex post facto* concerns.

Second: That the Defendant, knowing the unlawful purpose of the plan, willfully joined in it; and

Third: *The Defendant knew that the Palestinian Islamic Jihad, Abd Al Aziz Awda, Fathi Shiqaqi, and Ramadan Abdullah Shallah were designated as specially designated terrorists; and*

Fourth: *The Defendant knew what he was making or receiving as a contribution was a fund, good, or service; and*

Fifth: *The Defendant had the specific intent that the contribution would be used to further the unlawful activities of the Palestinian Islamic Jihad, Abd Al Aziz Awda, Fathi Shiqaqi, and Ramadan Shallah; and*

Sixth: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of "overt acts" described in the indictment; and

Seventh: That such "overt act" was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.¹⁶

¹⁶ Based on Offense Jury Instructions 13.1, General Conspiracy Charge, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003; Doc. 479, Order of Mar. 12, 2004, at 27; U.S. Const. amends. I, V.

A Defendant Cannot Be Guilty By Association. *Guilt is personal. That means that you must determine whether a Defendant has engaged in criminal conduct and joined a criminal conspiracy based on his own proven conduct.*¹⁷ *In determining whether a Defendant was a member of an alleged conspiracy, you are not to consider what others may have said or done.*¹⁸

Of course, mere presence at the scene of a transaction or event, or the mere fact that persons may have associated with each other, and may have assembled together and discussed common aims, interests, and beliefs, does not, alone, establish proof of a conspiracy. A person who has no knowledge of a conspiracy, but who happens to act in a way which advances some purpose of the conspiracy, does not thereby become a conspirator. *You should not find any Defendant to be a conspirator solely by virtue of presence, association, or knowledge.*

Instructions On The Law Governing Substantive Offenses. In addition to the alleged conspiracy offenses, the indictment also charges certain so-called “substantive offenses.”¹⁹

¹⁷ U.S. Const. amend. V; *see, e.g., Scales v. United States*, 367 U.S. 203, 224-25 (1961); *United States v. To*, 144 F.3d 737, 746 (11th Cir. 1998).

¹⁸ Mr. Fariz has omitted and objects to an instruction, as proposed in the government’s instructions (Doc. 1144 at 12-13), that provides that a person may become a member of the conspiracy with simply a “general understanding” of the conspiracy, particularly since the conspiracies alleged in this case concern specific objects of the conspiracy (*e.g.*, conspiracy to murder, conspiracy to provide material support). Mr. Fariz also objects to the government’s instruction concerning co-conspirator statements.

¹⁹ Mr. Fariz has only provided proposed instructions concerning the offenses of which he is charged.

Counts Five Through Twenty-One

Counts Five through Twenty-One allege that certain of the Defendants knowingly and willfully used a facility in interstate and foreign commerce with the intent to (a) commit any crime of violence to further the unlawful activity of extortion and money laundering, in violation of the laws of the State of Florida and the United States, and (b) otherwise promote, manage, establish, carry on and facilitate the promotion, management, establishment, and carrying on of the unlawful activity of extortion and money laundering; and thereafter did promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity, in violation of Title 18, United States Code, Section 1952(a)(2) and (3).

The specific Counts charged are as follows: [Mr. Fariz would request that the Court read the chart on pages 118 and 119 of the Superseding Indictment]. You should consider each Count individually, and you must reach a unanimous verdict as to each Count.

The Defendant can be found guilty of that offense only if the government proves all of the following essential elements beyond a reasonable doubt:

- First:** That the Defendant *used a facility in interstate and foreign commerce on or about the time charged in the Indictment;*
- Second:** That the Defendant *used the facility in interstate and foreign commerce with the specific intent either to:*

(a) commit any crime of violence to further extortion and money laundering (which will be defined in a later instruction); or
(b) promote, manage, establish or carry on extortion and money laundering (which will be defined in a later instruction);²⁰ and

Third: That the Defendant thereafter knowingly and willfully committed an act to *either:*

(a) commit any crime of violence to further extortion and money laundering, or
(b) promote, manage, establish or carry on extortion and money laundering.²¹

Counts 22-32

Counts 22 to 32 charge certain of the Defendants, in the Middle District of Florida and elsewhere, with knowingly providing, and attempting to provide, material support and resources to a designated foreign terrorist organization, namely the Palestinian Islamic Jihad, by transferring and causing to be transferred specified amounts of money alleged in the indictment to the PIJ in the territories of the West Bank and Gaza, in violation of Title 18, United States Code, Section 2339B. Again, the term “material support and resources” will be defined in a subsequent instruction.

²⁰ Mr. Fariz would propose instructing the jury as to reaching a unanimous verdict at the end of the case.

²¹ Based on Offense Jury Instruction 67, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003; 18 U.S.C. § 1952(a)(2) and (3).

The specific Counts charged are as follows: [Mr. Fariz would request that the Court read the chart on pages 120 and 121 of the Superseding Indictment]. You should consider each Count individually, and you must reach a unanimous verdict as to each Count.

In order to prove a Defendant guilty of the charge of providing material support and resources to a designated foreign terrorist organization, the government must prove each of the following elements beyond a reasonable doubt:

First: On or about the date specified in the Indictment, the Defendant or Defendants provided the specified amount of money;

Second: To a designated foreign terrorist organization, that is the Palestinian Islamic Jihad in the West Bank and/or Gaza;

Third: The Defendant knew that the Palestinian Islamic Jihad was a designated foreign terrorist organization;

Fourth: The Defendant knew what he was providing was a material support or resource; and

Fifth: The Defendant had the specific intent that the material support or resource would further the unlawful activities of the Palestinian Islamic Jihad.²²

²² Based on Doc. 479, Order of March 12, 2004, at 25; see *United States v. Al-Hussayen*, No. CR03-048-C-EJL, Doc. 660, Jury Instructions, Instruction No. 37 (D. Idaho); Offense Jury Instructions 13.1, General Conspiracy Charge, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003; U.S. Const. amends. I, V.

Counts 33-43

Counts 33 through 43 allege that certain of the Defendants, in the Middle District of Florida and elsewhere, in offenses involving interstate and foreign commerce, transmitted and transferred, and attempted to transmit and transfer, funds, in the amounts alleged in each Count, from a place within the United States, namely the Middle District of Florida, to places outside the United States, including the West Bank and Gaza, with the intent to promote the carrying on of specified unlawful activities, in violation of Title 18 United States Code, Section 1956(a)(2)(A). These unlawful activities are alleged to be knowingly providing, and attempting to provide, material support and resources to the Palestinian Islamic Jihad, a designated Foreign Terrorist Organization, and willfully contributing funds, goods, and services to, or for the benefit of, a Specially Designated Terrorist, namely the Palestinian Islamic Jihad.

The specific Counts charged are as follows: [Mr. Fariz would request that the Court read the chart on pages 122 and 123 of the Superseding Indictment]. You should consider each Count individually, and you must reach a unanimous verdict as to each Count.

The Defendant can be found guilty of that offense only if *the government proves all of the following essential elements* beyond a reasonable doubt:

First: **That the Defendant knowingly transmitted and transferred *funds* as specified in each of the Counts of the Indictment from a place in the United States to a place outside the United States; and**

Second: That the Defendant engaged in the transmission and transfer with the intent to promote the carrying on of the “specified unlawful activity”; that is:

knowingly providing, and attempting to provide, material support and resources to the Palestinian Islamic Jihad, a designated Foreign Terrorist Organization, or willfully contributing funds, goods, and services to, or for the benefit of, a Specially Designated Terrorist, namely the Palestinian Islamic Jihad; and

Third: *The Defendant had the specific intent that the material support or resource, or funds, goods, or service, would further the unlawful activities of the Palestinian Islamic Jihad.*²³

The word "knowingly," as that term has been used in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

The word "willfully, " as that term has been used in these instructions, means that the act was committed voluntarily and purposely with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

²³ Offense Instruction 70.3, *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, 2003; Doc. 479; U.S. Const. amends. I, V.

First Amendment.²⁴

The First Amendment of the United States Constitution ensures individuals the freedom of speech, freedom of religion, and freedom to associate.²⁵ These rights are guaranteed equally to United States citizens and to citizens of foreign countries residing in the United States. The purpose behind the First Amendment is to protect unpopular individuals from retaliation for their beliefs.²⁶ Thus, the First Amendment protects even those associations or views that are unpopular or that you disagree with.

Freedom of Association.

The freedom of association protects an individual's right to associate with other individuals, groups, or organizations.²⁷ This right extends even to associations with groups, individuals, or organizations that may advocate, conduct, or engage in illegal activity.²⁸ Thus, even though the government has designated a group or an individual as

²⁴ Much of the following instruction is taken from the jury instruction used in *United States v. Al-Hussayen*, No. CR03-048-C-EJL, Doc. 660, Jury Instructions, Instruction No. 48 (D. Idaho) (a copy will be provided for the Court and the parties); *see* Doc. 592, Order of Aug. 4, 2004. Additional citations, most of which were previously cited in Doc. 543, are noted below.

²⁵ U.S. Const. amend. I.

²⁶ *McIntyre v. Ohio Elec. Common*, 514 U.S. 334, 357 (1995).

²⁷ *See Boy Scouts of America v. Dale*, 530 U.S. 640, 647-48 (2000); *Buckley v. Valeo*, 424 U.S. 1, 25 (1976); *Healy v. James*, 408 U.S. 169, 181 (1972); *NAACP v. Alabama*, 357 U.S. 449, 460 (1958).

²⁸ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

a terrorist, a person may still associate, affiliate, or support the group or individual.²⁹ The charges in this case do not prohibit merely being a member of a certain group or organization, including a designated foreign terrorist organization or specially designated terrorist, or associating with other individuals who are members of such groups. The charges also do not prohibit promoting and supporting the beliefs or goals of such a group. Therefore, as you consider the charges in this case, remember that the right to associate remains protected, and cannot be made criminal, unless it is established that (1) the group itself possessed unlawful goals and (2) the Defendant had the specific intent to further those illegal aims.³⁰

Freedom of Speech.

The freedom of speech protects an individual's or a group's right to express and advocate their beliefs. The First Amendment protects even speech advocating the use of force or violation of law so long as the speech is not directed at inciting or producing imminent lawless action and is not likely to incite or produce such action.³¹

²⁹ See *Buckley*, 424 U.S. at 48-49.

³⁰ See, e.g., *Claiborne Hardware Co.*, 458 U.S. at 916-17; *Healy v. James*, 408 U.S. 169, 186 (1972); *Aptheker v. Secretary of State*, 378 U.S. 500 (1964); *Scales v. United States*, 367 U.S. 203 (1961); *Noto v. United States*, 367 U.S. 290 (1961); *Sawyer v. Sandstrom*, 615 F.2d 311, 317 (5th Cir. 1980); *In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994).

³¹ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

The freedoms of speech and association include the right to raise money and to make financial contributions or donations.³² Therefore, while the indictment alleges that the Defendants provided material support and resources and funds to the Palestinian Islamic Jihad, you cannot find a Defendant guilty unless, in addition to the other elements, he had the specific intent to further the unlawful activities of the Palestinian Islamic Jihad.³³

Freedom of Religion.

The freedom of religion protects an individual's or a group's right to believe, profess, practice, and exercise whatever religious doctrine he or she may chose.

Conclusion. Now, we will begin the trial at this time by affording the lawyers for each side an opportunity to make opening statements to you in which they may explain the issues in the case and summarize the facts they expect the evidence will show. After all the testimony and evidence has been presented, the lawyers will then be given another opportunity to address you at the end of the trial and make their summations or final arguments in the case.

³² See, e.g., *Buckley*, 424 U.S. at 15-16, 22-25; *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 295-96 (1981); *Roberts v. United States Jaycees*, 468 U.S. 609, 626-27 (1984); *FEC v. National Conservative Political Action Comm.*, 470 U.S. 480, 493-95 (1985); *Let's Help Florida v. McCrary*, 621 F.2d 195, 199 (5th Cir. 1980).

³³ Doc. 479, Order of Mar. 12, 2004, at 25, 27; see, e.g., Doc. 543 and cases cited therein; see also *Arthur Andersen LLP v. United States*, slip op. 9 (May 31, 2005) (reversing conviction based on finding that the jury instructions were vague, in that they diluted the scienter requirement "so that it covered innocent conduct") (a copy will be provided for the Court and parties).

The statements that the lawyers make now, as well as the arguments they present to you at the end of the trial, are not to be considered by you either as evidence in the case (which comes only from the witnesses and exhibits), or as your instruction on the law (which will come only from me). Nevertheless, these statements or arguments are intended to help you understand the evidence as it comes in, the issues or disputes you will be called upon to decide, as well as the positions taken by both sides. So I ask that you now give the lawyers your close attention as I recognize them in turn for the purpose of making an opening statement.